REMARKS

Applicants' representative appreciates the courtesies extended during the telephonic interview of July 29, 2008. The amendments and remarks made herein are in accordance with those discussed during the telephonic interview.

The Final Office mailed May 7, 2008 considered claims 1-28, 42-46, 48-56 and 59-61. Claims 1-4, 8-13, 17, 19-24, 26, 27, 49 and 59 were rejected under 35 U.S.C. 102(e) as being anticipated by Freund et al. (US 2003/0167405) hereinafter *Freund*. Claims 16 and 61 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Freund* and further in view of Dybedokken et al. (US 6,760,411) hereinafter *Dybedokken*. Claims 5-7, 14, 15, 18, 25, 28, 54 and 55 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Freund* and further in view of Lipe et al. (US 5,748,980) hereinafter *Lipe*. Claims 42-44 and 60 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Freund* in view of Meyerson (US 6,941,356) hereinafter *Meyerson*. Claims 45, 52, and 53 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Freund* and further in view of Phillips (US 6,748,195) hereinafter *Phillips*. Claim 46 was rejected under 35 U.S.C. 103(a) as being unpatentable over *Freund* and further in view of Short et al. (US 6,130,892) hereinafter *Short*. Claim 48 was rejected under 35 U.S.C. 103(a) as being unpatentable over *Freund* and further in view of Robinson et al. (US 2005/0060365) hereinafter *Robinson*. Claims 50 and 51 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Freund* and further in view of Akiyama et al. (US 6,757,821) hereinafter *Akiyama*. Claim 56 was rejected under 35 U.S.C. 103(a) as being unpatentable over *Freund* and further in view of Korpi et al. (US 6,198,696) hereinafter *Korpi*.[1]

By this amendment claims 1, 8, and 16-18 are amended.[2] Claims 42-44, 47, 48, and 59 are can Accordingly, claims 1-28, 42-46, 50-56, 60, and 61 are pending, of which claim 1 is the only independent claim at issue.

The amendments to claim 1 include incorporating the limitations of claims 48 and 49 into claim 1. As a result of this amendment, the subject matter of claim 48 has been incorporated into

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[1] Although only prior art status of *Robinson* is being challenged at this time, Applicant reserves the right to challenge the prior art status of the other cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of other cited art in addition to *Robinson*.

[2] Support for the amendments to the claims are found throughout the specification and previously presented claims, including but not limited to paragraphs [0047], [0048], [0058]-[0065] and Figures 2 and 3.

claim 1. Thus, subsequent discussion of *Robinson* is made with respect to independent claim 1, instead of previously (but now cancelled) dependent claim 48.

Robinson qualifies as art only under 35 USC 102(e), with an effective filing date of January 24, 2002. Submitted along with this response is a Declaration of (to be identified inventor or other qualifying individual), under 37 CFR 1.131 establishing invention of the subjet matter of Claim 1 as far back as December 20, 2001. Applicants submit that the subject matter of Claim 1 was constructively reduced to practice on December 20, 2001 by its inclusion in a first draft of the application. Further, Applicants submit that the subject matter of claim 1 was conceived of at least by December 20, 2001. The subject matter of claim 1 was diligently pursued from December 20, 2001 until January 24, 2002 and was also diligently pursued from January 24, 2002 to February 4, 2002. Thus, Applicants submit that the subject matter of Claim 1 was invented prior to January 24, 2002. Accordingly, Applicants respectfully submit that *Robinson* does not qualify as prior art and respectfully request that any rejections based on *Robinson* be withdrawn.

Further, Applicants respectfully traverse the submission that *Freund* teaches the use of bandwidth availability as a received parameter that is combinable into an identifier. *Freund* describes obtaining characteristics of a network, for example, whether it is dialup, Ethernet, etc. and that obtained characteristics can be combined into a Network ID. (Paras. [0123] and [0133] – [0135]). The table in [0133] lists a number of different types of connections as well as their ID string and Nice text. Different types of connections are expressly indicated. However, there is no indication, either express or implied, that parameters indicating available bandwidth of a type of network can be obtained or combined into a network ID. For example, *Freund* does not distinguish between Ethernet with 50% capacity vs. Ethernet with 20% capacity.

Accordingly, the cited art fails to teach or suggest, either singly or in combination:

...

an act of accessing one or more network environment parameters, including at least one parameter indicative of latency information for the network environment and at least one parameter indicative of available bandwidth information, the one or more network environment parameters representative of data transfer conditions within the network environment, the one or more network environment parameters accessed from the network environment subsequent to connecting to the network environment;

an act of combining the accessed one or more network environment parameters, including the at least one parameter indicative of the latency information for the network environment and the at least one parameter indicative of the available bandwidth information for the network environment, to generate an identifier;

an act of, based on the identifier, selecting characteristics specific to operating under the-data transfer conditions within the network environment, the selected characteristics having been saved from a previous connection to the network environment; and

an act of utilizing the selected characteristics, which correspond specifically to operating under the data transfer conditions of the network environment, to automatically modify the configuration of the computer system from the first configuration to a new configuration to thereby configure the computer system for operating in the network environment under the data transfer conditions.

as recited in claim 1, when viewed in combination with any other limitations of claim 1. For at least this reason claim 1 patentably defines over the art of record. Any remaining dependent claims depending form claim 1 and thus also patentably define over the art of record at least for the same reason as claim 1.

Claims 42-44 are cancelled rendering the rejections under 35 USC 112, first paragraph, moot.

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the

purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at 801-533-9800.

Dated this 8th day of September, 2008.

Respectfully submitted,

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